GRACE M. BROWN, ET AL.

IBLA 76-348 Decided April 1, 1976

Appeal from decision of New Mexico State Office, Bureau of Land Management, slightly reducing acreage in oil and gas lease NM 015545.

Affirmed.

1. Oil and Gas Leases: Generally -- Oil and Gas Leases: Lands Subject to -- Surveys of Public Lands: Generally

   The amount of acreage contained in an oil and gas lease may be reduced where, upon resurvey of the land, it is determined that the area under lease is actually smaller than the area shown by the original survey.

APPEARANCES: Grace M. Brown, et al., pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Grace M. Brown, Mabelle M. Miller, and the estate of T. H. McElvain, deceased, appeal from the October 30, 1975, decision of the New Mexico State Office, Bureau of Land Management (BLM), reducing the acreage in their lease, NM 015545, from 183.60 acres to 178.45 acres as the result of a resurvey of the land. The resurvey was accepted by the Bureau on August 28, 1972. The modification of the lease was effective as of that date.

Appellants do not question the validity of the resurvey. They assert, however, that they will have to make extensive recomputations of costs and revenues due to their commitment of the land to a unit with a producing well. They point out that they have held the lease since 1948.

[1] The reason the amount of acreage was reduced is that there is very simply only 178.45 acres in the area under lease and not 183.60 as shown by the original survey. The Mineral Leasing Act, 30 U.S.C. § 181 et seq. (1970) provides for the leasing of oil

and gas deposits. In Charles J. Babington, A-30653 (January 24, 1967), the Department held that such deposits may be leased to the extent that they are part of the federal public lands. Appellant, in that case, had leased an unsurveyed island in Louisiana, which, by metes and bounds description, contained 46 acres. An official survey, however, showed approximately 37 acres of land belonging to the United States. The rest of the "land," an area below mean low tide and mean high tide, was held to belong to the State of Louisiana. The Department held that it had no authority to lease land unless it was federal public land and, consequently, reduced the lease to approximately 37 acres.

While this case is not precisely identical, the principle is the same. The United States cannot lease land it does not have, or which does not exist, regardless of past errors.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge